

## Michigan Law Review First Impressions

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Volume 111

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2012

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### Recommended Citation

Aaron Zelinsky, *What's In A Name? A Brief Study of Legal Aptonyms*, 111 MICH. L. REV. FIRST IMPRESSIONS 55 (2012).

Available at: [http://repository.law.umich.edu/mlr\\_fi/vol111/iss1/4](http://repository.law.umich.edu/mlr_fi/vol111/iss1/4)

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# WHAT'S IN A NAME? A BRIEF STUDY OF LEGAL APTONYMS

Aaron Zelinsky\*

Law and literature ranges wide. Scholars use Shakespeare to illuminate issues of justice, Dickens to understand trusts and estates, and J.K. Rowling to explain the law of nations. But an important subset of this field has been hitherto neglected: the study of the names of law's protagonists—law and onomastics.<sup>1</sup>

This Essay takes the first step into this promising arena by identifying a previously unexplored category of cases, which it dubs “legal aptonyms.” Many are familiar with aptonyms but lack the vocabulary to describe them.<sup>2</sup> Aponyms—literally “apt names”—are those proper names that are “regarded as (humorously) appropriate to a person's profession or personal characteristics.”<sup>3</sup> Think of Shakespeare's quick-tempered Sir Hotspur, Dickens's acerbic Mrs. Sowerberry, or Rowling's pernicious Draco Malfoy. Although the study of aptonyms is widespread in other fields,<sup>4</sup> it has yet to make inroads into law. Until now.

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\* Visiting Assistant Professor, University of Maryland Francis King Carey School of Law. I thank Jed Glickstein, Edward Zelinsky, and Monica Mix (a physician who missed her true calling as an apothecary) for their comments, as well as my civil procedure class at the University of Maryland for suffering (albeit involuntarily) through an early version of this Essay. Thanks also to Marguerite Moeller and the rest of the *Michigan Law Review* staff for their editorial assistance, and to the following individuals for their help in identifying additional aptonyms: Josh Blackman (*Euclid*), Bruce Boyden (*World-Wide Volkswagen*), Jordan Singer (*Outlaw*), and John Steele (*Kartell*). As for those aptonyms yet undiscovered, please send them to Aaron.Zelinsky@gmail.com.

1. Onomastics is “the system underlying the formation and use of words especially for proper names.” *Onomastics*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/onomastics> (last visited March 17, 2013).

2. This phenomenon itself—the inability to put your finger on the right word—has a name: lethologica. But lethologica assumes that one knows the word in the first place; I am not familiar with a word to describe the lack of a word to properly describe a phenomenon. If such a word does not exist in English, it should be invented.

3. *Aptonym*, OXFORD ENGLISH DICTIONARY (3d ed. 2012), available at <http://www.oed.com/view/Entry/249202?redirectedFrom=aptonym#eid> (last visited April 4, 2013).

4. See, e.g., CLAIRE A. CULLETON, NAMES AND NAMING IN JOYCE 111 (1994) (discussing how “[i]n literature, as in life, a person or character is often given a name that, upon examination, may seem to have a telling or amusing relationship to his or her personality, appearance, or job”); FRANK H. NUESSEL, THE STUDY OF NAMES: A GUIDE TO THE

This Essay is divided into three parts. Part I surveys the history of aptonyms from the Bible to the present. Part II defines two types of legal aptonyms. Part III provides four examples of legal aptonyms: *Loving v. Virginia*, *Schmuck v. United States*, *Surowitz v. Hilton Hotels*, and *The Peerless* case. The Essay concludes by calling for further research into this promising field.

### I. A BRIEF HISTORY OF THE APTONYM

Western literature is littered with aptonyms, from virtually the entire cast of *Pilgrim's Progress* to some of the Bard's most celebrated figures.<sup>5</sup> Modern aptonyms range from the apocalyptic General Jack D. Ripper in *Dr. Strangelove* to *Star Trek's* cool and calculating android, Lieutenant Commander Data.<sup>6</sup> But aptonyms are not unique to Western fiction. The ancient Romans delighted in them, calling real-life aptonyms by the sobriquet *nomen est omen*—"the name is the prophesy."<sup>7</sup> In the *Book of Samuel*, Abigail begs David not to inflict harm on her husband Nabal through an aptonym, beseeching David that "as his name, so is he."<sup>8</sup> (In ancient Hebrew, the name "Nabal" sounds very much like the word for "revulsion.")

Fictional aptonyms have received much scholarly attention in recent years.<sup>9</sup> So, too, real-world aptonyms are under increasing focus. One 2010

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PRINCIPLES AND TOPICS 42 (1992) (providing a listing of real-world aptonyms); STEVE RIVKIN & FRASER SUTHERLAND, *THE MAKING OF A NAME: THE INSIDE STORY OF THE BRANDS WE BUY* (2004) (examining the relationship between branding and aptonyms).

5. John Bunyan, *Pilgrim's Progress*, in *EVERYMAN'S LIBRARY* 54 (Ernest Rhys ed., 1909) ("[A]nd after a little pause she said, I will call forth two or three more of the family. So she ran to the door, and called out Prudence, Piety, and Charity[.]"); see, e.g., WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE FOURTH* act 2, sc. 1 (Master Snare, a law enforcement official trying to arrest Jack Falstaff); *id.* at act 2, sc. 4 (Sir Ancient Pistol, a soldier); *id.* at act 3, sc. 2 (Justice Shallow, a babbling judicial official, and his taciturn sidekick, Justice Silence).

6. *DR. STRANGELOVE OR: HOW I LEARNED TO STOP WORRYING AND LOVE THE BOMB* (Columbia Pictures 1964) (the eponymous doctor is—of course—himself an aptonym); *STAR TREK: FIRST CONTACT* (Paramount Pictures 1996).

7. Sam Roberts, *Ms. Rose, by Any Other Name, Might Still Be a Florist*, N.Y. TIMES, Mar. 27, 2005, [http://www.nytimes.com/2005/03/27/weekinreview/27robe.html?ref=cecilfielder&\\_r=0](http://www.nytimes.com/2005/03/27/weekinreview/27robe.html?ref=cecilfielder&_r=0).

8. 1 *Samuel* 25:25. In the Hebrew text the words are more concise: "כְּשֵׁמוֹ כֵּן הוּא."

9. See generally ALASTAIR FOWLER, *LITERARY NAMES: PERSONAL NAMES IN ENGLISH LITERATURE* (2012); Alastair Fowler, *Proper Naming: Personal Names in Literature*, 58 *ESSAYS IN CRITICISM* 97 (2008); Marvin Hunt, *Charactonymic Structures in Sidney's Arcadias*, 33 *STUD. IN ENG. LITERATURE, 1500–1900* 1 (1993); Alexander Vladimirovich

paper showed that “medical doctors and lawyers were disproportionately more likely to have surnames that resembled their profession;”<sup>10</sup> for Dr. Bones and Mr. Law, Esq., *nomen* is *omen*. Other studies have assessed the predictive power of names on the economic and social outcomes of children.<sup>11</sup>

The legal world includes its own fair share of aptonyms, from august members of the bench like Judges Learned Hand and John Minor Wisdom to the fictional law firm of Dewey, Cheatem & Howe.<sup>12</sup> In 2006, an obscure law firm associate even experienced a brief burst of internet notoriety because of her aptonym: Sue Yoo.<sup>13</sup> Yet there has been no study of the rich field of aptonyms and the law. This Essay begins to rectify that oversight.

## II. LEGAL APTONYMS DEFINED

While famous lawyer aptonyms are amusing, “the government of the United States has been emphatically termed a government of laws, and not of men.”<sup>14</sup> And our law is made up of cases<sup>15</sup>—courts cite them, lawyers argue them, professors teach them, and students learn them. Thus, this Essay focuses on legal aptonyms in the context of cases.

This Essay defines two types of legal aptonyms: *Perfect legal aptonyms* are those cases where the name of one of the title parties captures the legal rule for which the case stands. *Imperfect legal aptonyms* are those where the name of an individual in the case (who is not a named party) reflects the legal rule. The following Part examines four legal aptonyms: two perfect

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Kalashnikov, *William Makepeace Thackeray and Fyodor Mikhaylovich Dostoyevsky: Name Sensitive Authors*. In *Homage to Great Novelists*, 4 MUTATIS MUTANDIS 205 (2011).

10. Ernest L. Abel, *Influence of Names on Career Choices in Medicine*, 58 NAMES: A J. OF ONOMASTICS 65 (2010).

11. See STEVEN D. LEVITT & STEPHEN J. DUBNER, *FREAKONOMICS Chapter Six: Perfect Parenting, Part II; or: Would a Roshanda by Any Other Name Smell as Sweet?* (2005).

12. E.g., Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1755, 1779 (2006) (discussing the “mythical Washington firm of Dewey, Cheatem & Howe”).

13. E.g., Timothy Noah, *Aptonym Watch: Sue Yoo Too!*, SLATE (May 2, 2006, 4:02 PM), [http://www.slate.com/articles/news\\_and\\_politics/chatterbox/2006/05/aptronym\\_watch\\_sue\\_yoo\\_too.html](http://www.slate.com/articles/news_and_politics/chatterbox/2006/05/aptronym_watch_sue_yoo_too.html).

14. *Marbury v. Madison*, 1 Cranch 137, 163 (1803).

15. I leave for a later time the study of aptonyms in statutes, a fertile field for further inquiry. See, e.g., *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001*, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended in scattered sections of U.S.C.). Ditto the study of legal eponyms—those cases which have given their name to a test, such as *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

legal aptonyms followed by two imperfect ones. Additional aptonyms are collected in the Appendix.

### III. SOME LEGAL APTONYMS

#### A. *The Power of Loving*

*Loving v. Virginia*<sup>16</sup> is the granddaddy<sup>17</sup> of all legal aptonyms. Familiar to all first-year constitutional law students, the Lovings were an interracial couple: Richard was white, and Mildred was black. They were legally married in Washington, D.C. in June 1958 and returned to Caroline County, Virginia, where their union was unlawful. They pleaded guilty to violating Virginia law and received a suspended one-year prison sentence. The Lovings challenged their conviction all the way to the Supreme Court.

In a unanimous opinion written by Chief Justice Warren, the Court held that what the Lovings had brought together, no state could split asunder:

Marriage is one of the “basic civil rights of man,” fundamental to our very existence and survival. To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State’s citizens of liberty without due process of law.<sup>18</sup>

In aptonymic terms, racist laws fell before the power of *Loving*.<sup>19</sup>

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16. 388 U.S. 1 (1967).

17. I use the term “granddaddy” here in the sense of “most venerable,” not in the sense of “oldest.” *Granddaddy*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/granddaddy> (last visited Mar. 25, 2013). *Loving* is not the oldest legal aptonym, but it is likely the most famous. See Gilbert Cruz, *Top Ten Controversial Supreme Court Cases: Loving v. Virginia*, TIME MAGAZINE (Dec. 10, 2010), [http://www.time.com/time/specials/packages/article/0,28804,2036448\\_2036452\\_2036634,00.html](http://www.time.com/time/specials/packages/article/0,28804,2036448_2036452_2036634,00.html).

18. *Loving*, 388 U.S. at 12 (internal citations omitted).

19. See Jan Dalley, *War and Pieces of Sugar Candy*, FINANCIAL TIMES (May 19, 2008, 3:50 PM), <http://www.ft.com/cms/s/2/9634a6ce-22d7-11dd-93a9-000077b07658.html> (“American apartheid was ended by the power of *Loving*.”); cf. HUEY LEWIS AND THE NEWS, *The Power of Love*, on BACK TO THE FUTURE: MUSIC FROM THE MOTION PICTURE SOUNDTRACK (1985) (“It don’t take money and it don’t take fame/Don’t need no credit card to ride this train/Tougher than diamonds and stronger than steel.”).

### B. Prosecuting Schmucks

Wayne Schmuck was a used car salesman who tampered with odometers.<sup>20</sup> He sold the lemons to unknowing dealers who passed them on to retail customers. To complete the sale, the dealers submitted, via mail, title applications to the Wisconsin Department of Transportation listing the bogus mileage number. When Schmuck was discovered, the government charged him with mail fraud. He was convicted and appealed, claiming that the mailings were not made in furtherance of his fraudulent scheme of odometer tampering.

In *Schmuck v. United States*, the Supreme Court held the eponymous protagonist guilty of mail fraud because “[u]nder these circumstances, we believe that a rational jury could have found that the title-registration mailings were part of the execution of the fraudulent scheme, a scheme which did not reach fruition until the retail dealers resold the cars and effected transfers of title.”<sup>21</sup> The court rested its logic on the premise that “Schmuck’s was not a ‘one-shot’ operation in which he sold a single car to an isolated dealer. His was *an ongoing fraudulent venture*.”<sup>22</sup> He was guilty of mail fraud in part because his was a continuing contemptible behavior, not a one-off mistake. In other words, Schmuck was guilty because he was a schmuck.<sup>23</sup>

### C. Of Brilliant Lawyers

Deborah Surowitz was “a Polish immigrant with a very limited English vocabulary and practically no formal education.”<sup>24</sup> She worked in New York City as a seamstress and, by 1957, had saved up a small amount of money she wanted to invest. Lacking the expertise to select her own stocks, she turned to her son-in-law, the Harvard Law School-educated Irving Brilliant. As the Supreme Court noted, Brilliant was particularly bright: he “possessed a master’s degree in economics from Columbia University, he was a professional investment advisor, and in addition to his degrees and his

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20. *Schmuck v. United States*, 489 U.S. 705, 707 (1989). The Court describes Schmuck as a “used-car distributor” because he was selling directly to retailers. *See id.*; cf. ROALD DAHL, *MATILDA* 45 (Puffin Books 1990) (1988) (“[T]hese days you can’t just take the speedometer out and fiddle the numbers back like you used to ten years ago.”).

21. *Schmuck*, 489 U.S. at 712.

22. *Id.* at 711 (emphasis added).

23. *Schmuck*, OXFORD ENGLISH DICTIONARY, <http://www.oed.com/view/Entry/172456?redirectedFrom=schmuck#eid> (last visited Apr. 4, 2013) (defining “schmuck” as “[a] contemptible or objectionable person”).

24. *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 368 (1966).

financial acumen, he wore a Phi Beta Kappa key.”<sup>25</sup> Brilliant invested Surowitz’s funds in Hilton Hotels, and there they sat—appreciating—for five years.

In the winter of 1962, Surowitz received a mailing from Hilton Hotels announcing a stock buyback plan. Not understanding the mailing, she took it to Brilliant. He became convinced that Hilton was committing fraud, explained the situation to her, and worked with a colleague to prepare a derivative action in which Surowitz would be the named plaintiff. Because Federal Rule of Civil Procedure 23 required that the named plaintiff in a derivative action personally verify the complaint,<sup>26</sup> Brilliant explained the complaint to his mother-in-law as best he could. Based on her trust in him, Surowitz signed the complaint. Hilton Hotels moved to dismiss the action, arguing that Surowitz’s complaint violated Rule 23 because she did not personally understand what she had signed. The lower courts agreed with Hilton.

But the Supreme Court ruled for Surowitz. The Court held that “[t]he basic purpose of the Federal Rules is to administer justice through fair trials”<sup>27</sup> and that, were it to follow the lower courts, “a woman like Mrs. Surowitz, who is uneducated generally and illiterate in economic matters, could never under any circumstances be a plaintiff in a derivative suit.”<sup>28</sup> In short, justice—and thus the Federal Rules of Civil Procedure—required that an unsophisticated plaintiff be allowed to rely on the “substantial and diligent investigation by [a] Brilliant [lawyer].”<sup>29</sup>

#### D. The (*Not So Peerless*) Peerless

Legal aponyms are not limited to the Supreme Court, nor to the United States. Consider the classic 1864 English case *Raffles v. Wichelhaus*.<sup>30</sup>

Raffles contracted to sell cotton to Wichelhaus, which was to be transported from Bombay to Liverpool via a ship named *The Peerless*. However, two ships named *The Peerless* arrived in Liverpool from Bombay: one having departed Bombay in October, the other in December. When the December *Peerless* arrived in Liverpool, Wichelhaus refused delivery of the cotton, claiming he had intended to purchase the cotton on the October *Peerless*, not its December sister. The Court agreed with Wichelhaus that

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25. *Id.*

26. This rule is now contained in Federal Rule of Civil Procedure 23.1.

27. *Surowitz*, 383 U.S. at 373.

28. *Id.* at 372.

29. *Id.* (internal citations omitted).

30. 159 Eng. Rep. 375 (Exch. 1864).

there was no meeting of the minds—the contract failed to specify which *Peerless* was the subject of the agreement—and therefore no contract.

No doubt many a student has wondered at the coincidence of two ships sharing the same name,<sup>31</sup> both carrying cotton, both sailing from Bombay to Liverpool in late 1864. But it is the name of the ships that has garnered *Raffles* such widespread renown. In ruling that a contract must have a meeting of the minds specifying a peerless set of goods, the King's Bench made aptonymic history and propelled the *The Peerless* case into textbooks around the globe.<sup>32</sup>

### CONCLUSION

While some may claim that legal aptonyms are mere playthings—after all, *Rose v. Giamatti* by any other name would still be a sweet case<sup>33</sup>—they are part of a long and ancient tradition stretching back to biblical times. This Essay begins the discussion of legal aptonyms, but it does not end it. Many questions remain: Is *nomen* truly *omen*? Would the Lovings have won if they were the Bickers?<sup>34</sup> Would *United States v. Mensch*<sup>35</sup> have turned out differently than *Schmuck*?<sup>36</sup> I leave these—and many others—for a later time, when more information about aptonyms has been collected. For now it is enough for us to appreciate their very existence.

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31. I am aware of no word in the English language to describe the “same-name” phenomenon (“homonym” seems closest but isn’t quite right). I recommend importing the Dutch word “naamgenoot” or “namepair.”

32. Some may argue that this case is not a legal aptonym because the name represents the *opposite* of the rule and would argue instead that the ships need a name like *The One of Many*. See, e.g., Adam J. Kolber, *A Limited Defense of Clinical Placebo Deception*, 26 YALE L. & POL’Y REV. 75, 128 n.239 (2007) (suggesting that a physician named “Dr. Patient” should be classified as an “inaptonym”).

33. 721 F. Supp. 906 (S.D. Ohio 1989).

34. Or if they were represented by the husband and wife who compose the firm of Bickers & Bickers? See BICKERS & BICKERS, ATTORNEYS AT LAW, <http://www.bickerslaw.com> (last visited March 17, 2013).

35. 13 U.S.C.M.A. 451 (1963).

36. See Alex Kosinski & Eugene Volokh, *Lawsuit, Shmawsuit*, 103 YALE L.J. 463, 465 n.14 (1993).



## APPENDIX: SOME ADDITIONAL APTONYMS

*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) (limiting the extent of a court's personal jurisdiction under the minimum contacts test so that it is not worldwide).

*Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (finding constitutional geography-based ["euclidean"] zoning limitations).

*Kartell v. Blue Shield*, 749 F.2d 922 (1st Cir. 1984) (holding that insurance billing practices do not constitute monopolization).

*People v. Arzon*, 401 N.Y.S.2d 156 (N.Y. Sup. Ct. 1978) (concluding that committing arson constitutes depraved indifference to human life).

*Outlaw v. People*, 17 P.3d 150 (Colo. 2001) (holding that a history of criminal activity in an area is insufficient to create a reasonable suspicion that a crime is being committed).

*Fitch v. Valentine*, 959 So. 2d 1012 (Miss. 2007) (upholding actions for alienation of affection).